

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 1

Filed by: Sally Gardner-Lane  
Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

JOHN LEZDEY  
and ALLAN WACHTER

Junior Party,  
(Patent 5,532,215),

v.

STEPHEN EISENBERG,  
SHARON M. WAHL and ROBERT C. THOMPSON

Senior Party,  
(Application 08/485,438).

MAILED

FEB 26 2002

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Patent Interference No. 104,792

NOTICE DECLARING INTERFERENCE  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Sally Gardener-Lane has been designated to handle the interference. 37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for 2:00 pm on 7 May 2002 (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. The parties involved in this interference are:

Junior Party

Named inventors: John Lezdey  
Cherry Hill, New Jersey

Allan Wachter  
Tempe, Arizona

Application: US 08/322,293, filed 3 October 1994,  
issued as US 5,532,215 on 2 July 1996

Title: ANTIVIRAL COMPOSITIONS AND METHOD OF USE

Assignee: SONORAN DESERT CHEMICALS LIMITED  
LIABILITY COMPANY

Accorded Benefit: US 08/122,204, filed 15 September 1993,  
issued as US 5,376,633  
on 27 December 1994

US 07/953,234, filed 30 September 1992

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors:

Stephen Eisenberg  
Boulder, Colorado

Sharon M. Wahl  
Gaithersburg, Maryland

Robert C. Thompson  
Boulder, Colorado

Application:

US 08/485,438, filed 7 June 1995

Title:

INHIBITION OF RETROVIRUS INFECTION

Assignee:

AMGEN INC. AND THE UNITED STATES OF  
AMERICA AS REPRESENTED BY THE SECRETARY  
OF THE DEPARTMENT OF HEALTH AND HUMAN  
SERVICES

Accorded Benefit:

US 08/209,040, filed 9 March 1994

PCT/US93/08486, filed 9 September 1993

US 07/943,369, filed 9 September 1992

Attorneys:

See last page

Address:

See last page

**Part F. Count and claims of the parties**

Count 1

A method according to claim 3 of Lezdey (US 5,532,215)

or

A method according to claim 12 or claim 13 of Eisenberg (US 08/485,438).

The claims of the parties are:

Lezdey:	1-5
Eisenberg:	12 and 13

The claims of the parties which correspond to Count 1 are:

Lezdey:	1, 3-5
Eisenberg:	12 and 13

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Lezdey:	2
Eisenberg:	none

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See § 18 of the STANDING ORDER.

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Paper \_\_\_\_<sup>1</sup>

Filed on behalf of [name of party]  
By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Sally Gardener-Lane)

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JOHN LEZDEY  
and ALLAN WACHTER

Junior Party,  
(Patent 5,532,215),

v.

STEPHEN EISENBERG,  
SHARON M. WAHL and ROBERT C. THOMPSON

Senior Party,  
(Application 08/485,438).

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TITLE OF PAPER

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<sup>1</sup> Leave a blank line because the board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

1. § 7: date for identifying lead and backup counsel.
2. § 8: date for identifying any real party in interest.
3. § 9: date for requesting copies of involved and benefit applications and patents.
4. § 17: date for filing list of proposed preliminary motions.
5. § 19: date for accomplishing certain discovery.
6. § 20: date for filing clean copy of claims.
7. § 21: date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8. § 23: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9. § 33: date for objecting to admissibility of evidence.
10. § 34: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11. § 35: dates when cross-examination can take place.
12. § 45: dates for taking action with respect to settlement discussions

Part I: Order form for requesting file copies

FILE COPY REQUEST

Interference 104,792

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

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Telephone, including area code: \_\_\_\_\_



Part J. Signature of administrative patent judge

  
SALLY GARDNER-LANE  
Administrative Patent Judge

25 February 2002  
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in  
the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in  
the testimony and briefing phases of the interference  
(ORDERTE6)

PTO Form 850

Copy of claims 12 and 13 of US 08/485,438

Copy of US 5,532,215

DECLARE.007  
Revised 12 October 2000  
(replaces DECLARE.006.1)

cc (via Federal Express):

Attorney for Lezdey

(Real part in interest:  
SONORAN DESERT CHEMICALS  
LIMITED LIABILITY COMPANY):

John Lezdey & Associates  
701 Haddon Avenue  
Collingswood, N.J. 08108

Attorney for Eisenberg

(real party in interest:  
AMGEN INC. AND THE UNITED STATES  
OF AMERICA AS REPRESENTED BY THE  
SECRETARY OF THE DEPARTMENT OF HEALTH  
AND HUMAN SERVICES):

M. Paul Baker, Esq.  
FINNEGAN, HENDERSON, FARABOW, GARRETT  
& DUNNER, LLP  
1300 I Street, N.W.  
Washington, D.C. 20005



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: BOX INTERFERENCE  
COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Filed by: Judge Gardner-Lane  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942

Applicants: EISENBERG  
Application No.: 08/485,438  
Filed: 06/07/95  
For: INHIBITION OF RETROVIRUS INFECTION

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 104,792.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
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SALLY GARDNER-LANE  
Administrative Patent Judge